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der & Co. against J. H. Catron and another. From the decree in each case, Catron appeals. Affirmed.

E. M. Fulton, of Wise, for appellant.

Bond & Bruce and *Vicars & Perry*, all of Wise, for appellees.

CLINCHFIELD COAL CORPORATION *v.* REDD.

Sept. 19, 1918.

[96 S. E. 836.]

1. Malicious Prosecution (§ 16*)—Elements of Tort.—To sustain action for malicious prosecution, it must be alleged and proved that prosecution was set on foot by defendant, and has terminated not unfavorably to plaintiff, that it was instituted or procured by the co-operation of defendant, and that it was without probable cause and with malice.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

2. Malicious Prosecution (§ 35 (1)*)—Termination of Prosecution.—Dismissal of warrant by justice who issued it, without trial, at instance of defendant, was sufficient termination of prosecution to entitle plaintiff to sue for malicious prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

3. Malicious Prosecution (§ 64 (1)*)—Action by Servant—Ratification—Sufficiency of Evidence.—In action for malicious prosecution against coal company, evidence held sufficient to support verdict, and show that prosecution was instigated or brought about by co-operation of defendant, either on theory that injury was done by company's servant in course of his employment, or that company subsequently ratified and continued prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

4. Appeal and Error (§ 172 (1)*)—Question Not Raised Below.—Where, on trial of action for malicious prosecution, authority of officer who arrested plaintiff was challenged in no way, question cannot be raised on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 557.]

5. Malicious Prosecution (§ 42*)—Persons Liable—Employment of Public Officer.—Fact that employee of private detective agency was public officer did not preclude him from acting also in capacity of agent for coal company.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

6. Master and Servant (§ 316 (1)*)—"Independent Contractor."—"Independent contractor" is one who, exercising independent em-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ployment, contracts to do piece of work by his own methods and without control of employer, except as to results.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 364.]

7. Master and Servant (§ 318 (1)*)—Independent Contractor—Control of Master.—Employee of private detective agency, paid a salary by it, but nevertheless working for a coal-mining company and subject to control of its superintendent, was not employee of independent contractor, the detective agency; and hence the company was liable for malicious prosecution instituted by him.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 364.]

8. Master and Servant (§ 316 (1)*)—Delegation of Nonassignable Duties—Liability of Master.—Coal-mining company, which procured services of private detective from agency, could not say that relationship of master and servant did not exist between it and detective, so that it was not liable for malicious prosecution instituted by him, having delegated to him personal and nonassignable legal duties so that independent contractor doctrine did not apply.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 364.]

9. Malicious Prosecution (§ 56*)—Action of Officer as Such—Presumption—Burden to Overcome.—In action for malicious prosecution, burden was on plaintiff to overcome presumption that officer who arrested him, being public officer, and also employee of defendant, was acting solely in his official capacity.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

10. Malicious Prosecution (§ 56*)—Unofficial Action of Officer—Evidence to Overcome Presumption.—In action for malicious prosecution, evidence held to overcome presumption that defendant's employee, officer who arrested him and procured his arraignment before justice, was acting solely in his official capacity.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

11. Malicious Prosecution (§ 42*)—Persons Liable—Ratification.—Where private detective, in employment of coal company, acted for company in assaulting and arresting plaintiff, etc., subsequent continuance of prosecution by company's superintendent with knowledge of what had gone before, effected ratification of detective's acts, rendering company liable for malicious prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

12. Appeal and Error (§ 930 (1)*)—Review—Evidence.—After verdict for plaintiff, Supreme Court of Appeals must accept as true all facts favorable to plaintiff which evidence tended to establish.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 611.]

13. Malicious Prosecution (§ 21 (2)*)—Action on Advice of Counsel.—Advice of counsel, to avail as defense to action for malicious

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prosecution, must have been obtained before prosecution was begun, on full statement of facts to counsel.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

14. Malicious Prosecution (§ 20*)—Probable Cause—Mistake of Law.—Even if mistaken belief in legal proposition would afford ground for prosecutor to claim probable cause as defense in action for malicious prosecution, belief must be positive and definite, and a doubtful state of mind will not suffice.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 500.]

15. Malicious Prosecution (§ 29*)—"Probable Cause."—"Probable cause" is knowledge of such a state of facts and circumstances as excites the belief in a reasonable mind acting on them that plaintiff is guilty of the crime of which he is suspected.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 498, 500.]

16. Malicious Prosecution (§ 18 (1)*)—Probable Cause.—Prosecution of member of firm of contractors for violating Acts 1916, c. 517 (Code Supp. 1916, p. 635), prohibiting unlicensed person acting as labor agent, instituted by private detective in employ of coal mining company, whose acts were either authorized or ratified by company's superintendent, held without probable cause.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 498.]

17. Malicious Prosecution (§ 21 (1)*)—Action on Legal Advice.—That legal advice may be used as shield against suit for malicious prosecution, it must be given by person accepted and licensed by courts as one learned in law and competent to advise clients and court.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

18. Malicious Prosecution (§ 64 (2)*)—Probable Cause.—Fact that magistrate issued warrant for plaintiff, suing for malicious prosecution, was not in itself conclusive evidence of probable cause.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

19. Malicious Prosecution (§ 56*)—Probable Cause—Burden to Negative.—In action for malicious prosecution, plaintiff has burden to negative existence of probable cause.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

20. Malicious Prosecution (§ 64 (2)*)—Evidence.—Code 1904, § 3955, giving certain discretion to magistrates in issuance of warrants in criminal cases, adds nothing to general law of evidence in suits for malicious prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

21. Malicious Prosecution (§ 71 (2)*)—Probable Cause—Question for Jury.—In action for malicious prosecution, what is probable cause as an abstract proposition is a question for the court; but, in

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case of conflict in evidence, jury must determine whether in particular case such cause existed.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 501.]

22. Malicious Prosecution (§ 71 (3)*)—Malice—Question for Jury.—In action for malicious prosecution, to find upon issue of malice was clearly within province of jury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 502.]

23. Malicious Prosecution (§ 71 (3)*)—Malice—Question for Jury.—In action for malicious prosecution of member of firm of contractors for acting as labor agent without license, in violation of Acts 1916, c. 517 (Code Supp. 1916, p. 635), issue of malice held for jury under evidence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 502, 503.]

24. Trial (§ 285*)—Instructions—Reading in Light of Facts.—Instructions must always be read in the light of the facts of the particular case.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 744.]

25. Malicious Prosecution (§ 72 (1)*)—Instruction.—In action for malicious prosecution, instruction that, though defendant did not set on foot prosecution, if it did not disavow act at once, but ratified it, circumstance was equivalent to precedent authority, and chargeable to it, held not improper as imposing duty of immediate disavowal.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 507.]

26. Malicious Prosecution (§ 32*)—Malice Implied from Probable Cause.—In action for malicious prosecution, malice may be implied from want of probable cause, if circumstances warrant; but its existence may be repelled by circumstances, though there was not good ground for prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 502.]

27. Trial (§ 295 (1)*)—Instructions—Reading Together.—Instructions are to be read as a whole.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

28. Trial (§ 296 (2)*)—Cure of Error—Instructions.—In action for malicious prosecution, in view of others, unqualified instruction that malice might be inferred from want of probable cause held not reversible error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 744; 9 Va.-W. Va. Enc. Dig. 507.]

29. Malicious Prosecution (§ 72 (5)*)—Instruction—Evidence.—In action for malicious prosecution for acting as labor agent without license, instruction that if defendant's acts were committed with actual malice, etc., plaintiff might recover punitive damages, held warranted by evidence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 507.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

30. Trial (§ 260 (1)*)—Instructions—Repetition.—Where instructions given by court covered law of case adequately, rejection of instructions requested by defendant was not error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

Error to Circuit Court, Russell County.

Action by S. M. Redd against the Clinchfield Coal Corporation. To review judgment for plaintiff, defendant brings error. Affirmed.

Burns & Kidd, of Lebanon, and *Morison, Morison & Robertson*, of Bristol, for plaintiff in error.

Chapman, Peery & Buchanan, of Tazewell, and *M. M. Long*, of St. Paul, Va., for defendant in error.

COLLINS *v.* COMMONWEALTH.

Sept. 19, 1918.

[96 S. E. 826.]

1. Criminal Law (§ 517 (1)*)—Confessions—Admissibility.—A statement by accused before a justice of the peace on a preliminary hearing that "he wanted to plead guilty to the charge" was not a judicial confession, but was admissible as an extrajudicial confession upon the same charges in an indictment.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 81.]

2. Criminal Law (§ 517 (1)*)—Confession—Admissibility.—An extrajudicial confession is not inadmissible merely because insufficient in itself to prove the charge.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 82.]

3. Intoxicating Liquors (§ 236 (1)*)—Unlawful Transportation—Sufficiency of Evidence.—Evidence held sufficient to sustain a conviction of unlawful transportation of whisky.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

4. Criminal Law (§ 538 (3)*)—Confessions—Sufficiency to Prove Charge.—Where one was brought before a justice upon a warrant charging him with selling, giving away, offering, keeping, exposing for sale, transporting, and aiding in procuring ardent spirits contrary to law, a statement by him that he wanted to plead guilty to "the charge" was too uncertain to alone support a conviction for transporting liquor.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 97.]

5. Criminal Law (§ 534 (1)*)—Confessions.—Evidence as to confessions of parties is inconclusive to establish the fact without the aid of other testimony.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 98.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.